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February 16, 2018

Via ECF

Hon. Nicholas G. Garaufis
United States District Court
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Century Surety Company v. Mission Design & Management, Inc., The Walsh Company, LLC, Bakers Dozen Partners LLC, EMM Group Holdings LLC, Bowery At Spring Partners, LP, Juan Maurisaca and Jaime Guichay Guerrero
Civil Action No.: 1:16-02075-NGG-SMG
PMT Client : Bowery At Spring Partners, LP
D/L : 9/8/2012
Our File : USC-00281.2/DOD

Your Honor:

The following letter is written in regard to Mr. Kohane's letter motion to the Court dated January 31, 2018 (ECF document 48). The undersigned has appeared on behalf of Bowery At Spring Partners, LP, one of the defendants in this declaratory judgment action.

In his recent letter to the Court, Mr. Kohane correctly states that all defense counsel in this matter had agreed that the Second Circuit's summary order in Endurance American v. Century Surety, 630 Fed. App'x 6 (2Cir. 2015) [hereinafter "Endurance American"] concerned insurance policy wording identical with the insurance policy at issue in this matter. Thus, Mr. Kohane correctly noted in his January 31, 2018 correspondence that none of the attorneys herein sought a pre-motion conference nor did any counsel wish to engage in unnecessary motion practice based upon the Second Circuit's summary order in Endurance.

On February 14, 2018, the undersigned learned of a more recent Second Circuit summary order in the case of Hastings Development v. Evanston Insurance, 701 Fed. App'x 40 (2Cir. 2017) [hereinafter "Hastings"] which was issued on July 10, 2017. The Second Circuit panel's summary order in Hastings came to a different conclusion than the summary order in the Endurance American case.

As this Court knows, neither summary order has precedential effect over this matter.

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Based upon the foregoing, Bowery At Spring Partners, LP respectfully requests a pre-motion conference as originally suggested by Mr. Kohane and Ms. Ehman in their correspondence dated December 20, 2017 (ECF document 47).

Respectfully submitted,

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By: 
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